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Supreme Court, U.S.
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No. 87-889

IN THE
SUPREME COURT OF THE UNITED STATES

October Term, 1987

JOSEPH COMPOY, WARDEN ATTORNEY
OF THE STATE OF CALIFORNIA

Petitioner,

v.

NATHAN KEVIN TURNER,

Respondent.

BRIEF IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI

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QUESTION PRESENTED

Should this Court depart from its usual rule, and review a case turning solely on the interpretation of state law and procedure, when the decision of the court below correctly interprets and applies state law?

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INTRODUCTION

The Petition does not deserve this Court's attention. It presents only a question of the interpretation of California procedure, as even Petitioner recognizes. (Petition ("Pet.") at 22.) In attacking the correct interpretation of state law made by the court below, Petitioner has inaccurately characterized California decisional authority. Likewise, Petitioner's exaggerated claims of potential future harm are difficult to credit: The holding below has been settled law for over ten years.

If Petitioner wishes to alter state procedures on addressing ineffective assistance of counsel claims on direct appeal, Petitioner should direct his pleas to California Supreme Court, not this Court. The Petition is simply another attempt to create additional procedural bars to the speedy resolution of Respondent Turner's habeas claims by the District Court, despite settled law of this Court to the contrary. Accordingly, Respondent requests that the Court deny the Petition, allowing Respondent to present his constitutional claims to a federal forum.

STATEMENT OF THE CASE

Facing extremely serious charges, Respondent Nathan Kevin Turner ("Turner") moved before trial to replace his counsel, claiming the attorney was not "working with" him and had demonstrated limited preparation through only minimal contacts with Turner over the four months before trial. (Appendix D to Pet., p. A-37.) The trial judge denied Turner's motion, and at trial Turner was convicted of 46 counts covering various offenses and sentenced to serve 174 years and 4 months in state prison. (Pet., at 7.)

Turner appealed the judgment in state court, raising the claim that he was denied effective assistance of counsel at trial by his counsel's failure to investigate certain defenses, failure to present a diminished capacity defense, failure to consult a

psychiatrist and failure to raise the issue that PCP addiction resembles schizophrenia.[1/] (R5, lodged opening brief.)

Turner's claims were presented in voluminous briefs to the California Court of Appeal, (R5, lodged opening brief), including the merits of his ineffective assistance of counsel claims. The response briefs of the California Attorney General, on behalf of the state, dealt with the merits of Turner's claim at length. (R5, lodged respondent's brief, at pp. 11-16.) The California Court of Appeal, in a fourteen page unpublished opinion, rejected Turner's arguments after explicitly discussing the merits of his ineffective assistance of counsel and other claims. (Appendix D to Pet., at pp. A-33 through A-37.)

The California Supreme Court denied Turner's petition for hearing, likewise accompanied by a voluminous briefing of the issues, (R5, lodged appellant's petition for hearing), without indicating the grounds for denial.

Turner then filed a petition of habeas corpus in federal District Court. Despite Turner's direct appeal to the California Supreme Court, the District Court dismissed his petition for failure to exhaust state remedies, because Turner had not also filed a subsequent state habeas petition.

The Court of Appeals reversed. Turner v. Compoy, 827 F.2d 526 (9th Cir. 1987). After a careful analysis of California case law, the court held that California does not require ineffective assistance of counsel claims such as Turner's to be addressed on the merits only in a state habeas petition. Under California precedents, the state courts are to deny on the merits an ineffective assistance of counsel claim presented on direct appeal if the appellant does not sufficiently allege that counsel's actions fell below the legally required standard or if the record

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1/ Turner also raised the question of whether a person so severely intoxicated by PCP as to be presumed under the influence is capable of effectively waiving Fifth Amendment Miranda rights to remain silent, whether his sentence of 174 years and 4 months was cruel and unusual, and a variety of other claims.

provides an adequate explanation of trial counsel's tactical choices. Given the California Supreme Court's silence in denying Turner's appeal the Circuit Court presumed, pursuant to long-standing precedent, that the denial was on the merits. Respondent Turner therefore exhausted his state remedies by fully and fairly presenting his claims to the state courts on direct appeal, where they were denied.

ARGUMENT

I. THE DECISION BELOW IS A WHOLLY UNREMARKABLE APPLICATION OF SETTLED PRECEDENT, NOT APPROPRIATE FOR THIS COURT'S REVIEW.

The exhaustion rule requires that the "substance" of a federal constitutional claim has been "fairly presented" to the state courts. Anderson v. Harless, 459 U.S. 4, 6, 103 S.Ct. 276 (1982); Picard v. Connor, 404 U.S. 270, 275, 277-78, 92 S.Ct. 509 (1971). Such a claim is "fairly presented" by direct appeal even if the State court does not actually address the claim raised. Smith v. Digmon, 434 U.S. 332, 333, 98 S.Ct. 597 (1978).

Where the state permits alternative methods of review, the federal court does not require the prisoner to exhaust every alternative. Fay v. Noia, 372 U.S. 391, 83 S.Ct. 822 (1963). Thus, if a state prisoner presents his federal claim on direct review to the state court and it is rejected there, the prisoner need not ask the state for collateral relief based on the same issues in order to exhaust state remedies. Brown v. Allen, 344 U.S. 443 (1953).

The decision of the court below is no more than a fact-bound application of these settled principals.

II. PETITIONER IS ASKING THIS COURT TO SUBSTITUTE ITS JUDGMENT OF CALIFORNIA LAW FOR THE CORRECT ANALYSIS OF THE COURT BELOW.

Petitioner is not asking this Court to overturn its settled precedents. Nor does the Petitioner argue that there is a disagreement among the circuits on this issue. Instead, Petitioner argues that the opinion below misinterprets a California decision, People v. Pope, 23 Cal.3d 412, 152 Cal.Rptr. 732, 590 P.2d 859 (1979). See Pet., at 22. The Circuit Court's interpretation

of California law, however, is entirely correct and is consistent with the interpretation of California's own state courts. The Petition in this case does not present a "special and important reason" for the grant of certiorari, as required by Rule 17 of the Rules of the Supreme Court of the United States.

A. The Question Presented, Involving Solely The Interpretation Of California Law, Does Not Merit This Court's Attention.

As the court below recognized, a state may require that state prisoners present their claims to the state courts via a single procedure as long as the right to review is not unduly limited. Turner v. Compoy, 827 F.2d 526, 528 (9th Cir. 1987); Thompson v. Procunier, 539 F.2d 26, 28 (9th Cir. 1976).2/ The only question, then, raised by Petitioner is whether the California Supreme Court in People v. Pope, 23 Cal.3d 412, 152 Cal.Rptr. 732, 590 P.2d 859 (1979) has required all ineffective assistance claims like Turner's to be presented on state habeas instead of direct review.

The United States Supreme Court is not a court of last resort for the interpretation of various state's laws. Moreover, as this Court recently recognized, the Supreme Court should "defer to the Court of Appeals which is more familiar with [the state court's] practice," on the issue of whether a particular avenue of appeal adequately exhausts state remedies. Granberry v. Greer, ____ U.S. ____, 107 S.Ct. 1671, 1676 n.9 (1987).

B. The Interpretation Of California Law By The Court Below Is Correct.

The California Supreme Court has stated that issues reviewable on direct appeal in California "include those raised by a claimed ineffectiveness of counsel." In re Brown, 9 Cal.3d 679,

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2/ See also, Murray v. Carrier, 477 U.S. 478, 106 S.Ct. 2639, 2646-48 (1986); Reed v. Ross, 468 U.S. 1, 10-12, 104 S.Ct. 2901 (1984); Mann v. Dugger, 817 F.2d 1471, 1474-75 (11th Cir. 1987) (failure to raise a claim on direct appeal as required by state law precludes federal habeas review).

682, 108 Cal.Rptr. 801, 511 P.2d 1153 (1973). On direct appeal, California courts have often reviewed and decided ineffective assistance of counsel claims similar to those urged by Turner. See Hall v. Sumner, 682 F.2d 786, 788 (9th Cir. 1982) (the California state court, on direct appeal, had "reviewed all of Hall's ineffective assistance claims," similar to Turner's here, and found them "meritless"); People v. Spring, 153 Cal.App.3d 1199, 1208, 200 Cal.Rptr. 849 (1984) (denying on the merits an ineffective assistance of counsel claim raised on direct appeal); People v. Weston, 114 Cal.App.3d 764, 778-82, 170 Cal.Rptr. 856 (1981) (the court, citing People v. Pope, determined both the incompetency of counsel claims urged on direct appeal as well as those restated in a joined habeas petition).3/

Nothing in the California Supreme Court's decision in People v. Pope, 23 Cal.3d 412, 152 Cal.Rptr. 732, 590 P.2d 859 (1979) requires petitioners to present their incompetence of counsel claim on state habeas proceedings rather than on direct appeal. To the contrary, Pope specifies that the merits of an ineffective assistance of counsel claim, even based on matters outside the record, may be decided on appeal. Under Pope, "a claim of ineffective assistance is more appropriately made in a petition for habeas corpus," only if (1) the appellant carries the burden of proving that trial counsel failed to act in a manner to be expected of a reasonably competent attorney, (2) appellant demonstrates that counsel's acts or omissions resulted in the withdrawal of a potentially meritorious defense, and (3) the

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3/ See also People v. Rodriquez, 275 Cal.App.2d 946, 953-955, 80 Cal.Rptr. 397 (1969) (ineffective assistance of counsel case); People v. Angulo, 85 Cal.App.3d 514, 148 Cal.Rptr. 517 (1978) (holding, on direct appeal, that joint representation of two co-defendants resulted in prejudice, requiring reversal of the judgments); People v. Carter, 275 Cal.App.2d 815, 819-821 80 Cal.Rptr. 202 (1969) (court addresses on appeal incompetence of counsel claim stemming from dual representation).

record contains no explanation for the challenged aspect of representation.[4/] 23 Cal.3d, at 425-426.

Later California decisions have interpreted Pope consistent with this language. For example, in People v. Phillips, 41 Cal.3d 29, 60-62, 222 Cal.Rptr. 127, 711 P.2d 423 (1985), decided after Pope, the California Supreme Court addressed the substance of some of the prisoner's ineffective assistance of counsel theories based on materials outside the record on direct appeal, while leaving others for habeas. See also People v. Haynes, 104 Cal.App.3d 118, 123, 164 Cal.Rptr. 552 (1980) (restating the Pope test consistent with the Ninth Circuit's view).

Here, Turner presented his claims to the state appellate court in voluminous detail. (See R5, lodged opening brief, lodged reply brief). In response, the California Attorney General, representing the state, discussed the facts and briefed the merits of those claims, arguing that even if Turner's version of the facts were true, his allegations did not make out a legally sufficient ineffective assistance claim, and that the record explained his counsel's actions as correct tactical choices. (R5, lodged respondent's brief.)[5/] Given the state's

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4/ Petitioner's argument that Pope holds that all ineffective assistance arguments based on matters outside the record must be dealt with only on habeas is flatly contradicted by the language of Pope. It is also logically unsupportable. Under Petitioner's theory, this Court's pronouncement in Wood v. Georgia, 450 U.S. 261, 274 n.21, 101 S.Ct. 1097 (1981), refusing to vacate a state criminal judgment on appeal but stating that "relief may be available in habeas corpus proceedings," would thereafter be read as an inflexible pronouncement that dual representation attorney conflict of interest claims may not be reviewed on direct appeal by the U.S. Supreme Court, under any circumstances.

5/ Specifically, the state argued that even assuming that Turner was on PCP at the time of his confession, his confession was still voluntary (R5, lodged respondents' brief, at 13-14); that Turner's counsel "was as effective as possible given the facts and circumstances of his case," (id., at 15); that diminished capacity was not a potentially meritorious defense or a defense to the general intent crime charges against Turner, (id., at 16); that the record explained counsel's choice to forego pursuing the PCP-based defense as the most effective tactical course of action: That to claim Turner was not the assailant was more persuasive than trying to claim, inconsistently, both that Turner wasn't the assailant and that he committed the acts, but
(footnote continued)

arguments, the state appellate court could determine Turner's ineffective assistance of counsel and other claims on the merits under Pope, rather than deferring their consideration until habeas. People v. Pope, 23 Cal.3d, at 425; People v. Haynes, 104 Cal.App.3d, at 123.

Petitioner makes a lengthy argument that denial of a petition by the California Supreme Court should not be taken as a determination on the merits of a case. (Pet., at 17-23.) This extensive discussion is simply irrelevant: A state court cannot prevent the exhaustion of a federal claim by simply refusing to address it. Smith v. Digmon, 434 U.S. 332, 333, 98 S.Ct. 597 (1978), Swanger v. Zimmerman, 750 F.2d 291, 295 (3rd Cir. 1984). Where exhaustion is concerned, the question is not whether the state court has passed on the merits of the constitutional claim presented, but rather whether the federal claims have been "fairly presented," whether decided or not. Anderson v. Harless, 459 U.S. 4, 6, 103 S.Ct. 276 (1982); Picard v. Connor, 404 U.S. 270, 275, 277-78, 92 S.Ct. 509 (1971).6/ The State Court of Appeals explicitly dealt with the merits of Turner's claims under the analysis set out in Pope. Turner's voluminous briefs set out his legal theories and the factual basis for his claims. Under the circumstances, the holding below correctly concluded that Turner had provided an adequate opportunity for the state courts to pass upon the merits of his federal claim.

Further, the Circuit Court's statement that it presumed the California Supreme Court denied Turner's direct appeal on the

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suffered from diminished capacity on each of the many nights in question. (Id., at pp. 15-16.) After arguing each of Turner's contentions on the merits, the state raised, in one page of their 21-page Brief, the alternative argument that Turner's failure to provide an adequate record precluded review on appeal. (Id., at p. 17.)

6/ As one court explained, "[c]omity does not require that the federal courts decline to exercise jurisdiction in the face of allegations that the state courts have been presented with the merits of the claims for habeas corpus relief and have, for one reason or another, refused or been unable to act upon the claim." Galtieri v. Wainwright, 582 F.2d 348, 354 n.12 (5th Cir. 1978).

merits was simply a shorthand for the court's more lengthy analysis: Given the reasoning in Pope and the basis of Turner's claims, the Ninth Circuit refused to interpret the California Supreme Court's silence as a statement that its denial of review was premised on a holding that Turner should have brought his claim on state habeas.7/

III. PETITIONER'S CLAIMS THAT THE RULING BELOW WILL CREATE PROBLEMS ARE UNFOUNDED.

A. The Ruling Below Has Been The Controlling Law In The Ninth And Other Circuits For More Than Ten Years.

Petitioner devotes much of the petition to a speculative argument that the decision below "creates serious and important problems" because it will allow habeas petitioners to bypass the state courts in the future. (Pet., at pp. 13-35.) It is difficult to credit the Petitioner's argument, since the rule below has been the law in the Ninth and other Circuits for over ten years, without any appreciable showing of harm.

The Ninth Circuit's decision in Thompson v. Procunier, 539 F.2d 26 (9th Cir. 1976) is particularly instructive. Exactly contrary to the argument the California Attorney General now makes on behalf of Petitioner, there he suggested that presenting ineffectiveness of counsel claims to the California courts on habeas was improper; that such claims must be brought on direct appeal to adequately exhaust remedies. 539 F.2d at 27-28.

In response, the Ninth Circuit held in Thompson that ineffective assistance claims may be presented by direct appeal in California, but that "a federal court will not, prior to granting habeas relief, require that a petitioner, in a state where [two] alternative methods of reviewing and Constitutional issues are

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7/ Given the particular facts of this case and the unique analysis California courts are to go through under Pope, this holding is unremarkable. This Petition does not present the question of whether a federal habeas petition should be barred for an independent and adequate state procedural ground when that ground appears in the record and the state courts deny review without indicating that they have reached the merits.

available, exhaust [both] alternatives." 539 F.2d at 28. The court went on to conclude "where a petition for a writ of habeas corpus presenting a federal constitutional question is denied by a state court with no reason given, we will assume the state court has had an opportunity to pass upon the merits of the issue and has resolved it against the petitioner." Id. 8/

Similarly, in Hall v. Sumner, 682 F.2d 786 (9th Cir. 1982), the state prisoner raised ineffective assistance of counsel claims almost identical to Turner's -- failure to investigate facts and the defenses of diminished capacity and insanity -- via direct appeal in California. The presentation of these claims in the briefs and their rejection by the state courts adequately exhausted state remedies, and it was not necessary for the prisoner to file a state habeas petition in order to attack his conviction collaterally in federal court. 682 F.2d, at 788.

Petitioner predicts dire consequences in the future from the ruling below, but has failed to show any harm that has occurred during the past twelve years while the rule of law in the

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8/ See Gonzales v. Stone, 546 F.2d 807, 808 & n.2 (9th Cir. 1976) (where a California prisoner presents his ineffective assistance of counsel claim on direct appeal, he is not further "required to show that he sought collateral review in the state courts," and such an "additional step is not a condition to petitioning for federal habeas corpus relief"); Harris v. Superior Court, 500 F.2d 1124, 1128-29 (9th Cir. 1974) cert. denied, California v. Harris, 420 U.S. 973 (1975) (rejecting arguments by the California Attorney General that there was no exhaustion of remedies because the California Supreme Court may have denied the petition for review "on procedural rather than on substantive grounds," and holding that when the California Supreme Court "denies a habeas corpus petition without opinion or citation, or when it otherwise decides on the merits of the petition, the exhaustion requirement is satisfied"); see also Tamapua v. Shimoda, 796 F.2d 261, 262 (9th Cir. 1986) (exhaustion requirements were satisfied once the prisoner's claim was fairly presented to the highest court of Hawaii, describing the operative facts and the legal theory on which his claim is based); McNulty v. Olim, 652 F.2d 1369, 1370 (9th Cir. 1981) (holding that even though the Hawaii Supreme Court "did not explicitly cast its discussion on the effectiveness of the appellant's trial counsel in Constitutional terms, we are convinced that the issue the appellant seeks to have reviewed by means of his petition for a writ of habeas corpus was presented to the Supreme Court of Hawaii fully, fairly, and precisely. Therefore, appellant has exhausted his state remedies without regard to whether further collateral relief might be available to him under Hawaii law").

decision below was the status quo.[9] The rule below is also the settled law in other circuits.[10]

B. The Decision Below Is Fact-Bound And Narrowly Circumscribed By Other Ninth Circuit Precedent.

In this somewhat unusual case, Turner presented voluminous briefs summarizing the factual and legal basis for his arguments both to the California Court of Appeals and the California Supreme Court. The California Court of Appeals explicitly dealt with those claims on the merits. The Ninth Circuit's decision that under the circumstances the "substance" of Turner's federal Constitutional claim was "fairly presented" to the state courts is fact-bound, as other Ninth Circuit decisions reveal by narrowly circumscribing the holding of the case below. These other

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9/ As one commentator notes, habeas corpus cases as a percentage of the federal courts' civil caseload have actually decreased to 3.5% of the caseload; over a period of time when the number of state prisoners increased by 150%, the number of federal habeas petitions remained relatively static. Whither (or Wither) Habeas Corpus?: Reflections on the Supreme Court's 1985 Term, 111 F.R.D. 265, 266-67 (1986).

10/ See, e.g., Walker v. Zant, 693 F.2d 1087, 1088 (11th Cir. 1982) (summary denial by Georgia Supreme Court of direct appeal raising insufficient preparation of counsel issue sufficiently exhausted state remedies; no need for petitioner to also seek state collateral relief); Parker v. Parratt, 662 F.2d 479, 482 (8th Cir. 1981), cert. denied, 459 U.S. 846 (1982) (failure by the Nebraska Supreme Court to dispose of the petitioners' Sixth Amendment issues raised on direct appeal did not prevent that direct appeal from adequately exhausting state remedies, since it was "enough that the state court was on notice of the question and was presented the opportunity to rule"); Wiley v. Sowders, 647 F.2d 642, 647 (6th Cir.), cert. denied, 454 U.S. 1091 (1981), (direct appeal to the Kentucky Supreme Court of the petitioners' ineffective assistance claims sufficiently exhausted state remedies where the briefs to the Kentucky Supreme Court fairly presented the claim even though "the Kentucky Supreme Court refused to decide an issue put squarely before it"); Journet v. Coombe, 567 F.Supp. 503, 504-505 (S.D.N.Y. 1983) (direct appeal of an ineffective assistance of counsel claim adequately exhausted state remedies even though the petitioner's conviction was affirmed without opinion by the appellate division and the highest court of New York denied leave to appeal); see also, Swanger v. Zimmerman, 750 F.2d 291, 295 (3rd Cir. 1984) (direct appeal satisfies the exhaustion requirement even if the appellate court does not discuss the claim; the habeas corpus petitioner need not also raise the claim on state collateral attack before proceeding to federal court).

Ninth Circuit decisions and this Court's precedents render Petitioner's speculation of harm wholly unfounded.

The Ninth Circuit's ruling in Turner is limited by that Circuit's settled law that if a prisoner's claim based on material outside the record is not actually raised in the papers on direct appeal, then the prisoner has not exhausted his state remedies. Schiers v. People of California, 333 F.2d 173, 176 (9th Cir. 1964) (ineffective assistance of counsel claim).[11/] Further, where there are alternative remedies available, the petitioner may not attempt to exhaust state remedies by invoking a state procedure which is an extraordinary remedy that does "not create a fair opportunity for decision" by the state courts. Kellotat v. Cupp, 719 F.2d 1027, 1031 (9th Cir. 1983) (petition to the Oregon Supreme Court for interlocutory review does not constitute exhaustion).[12/]

Petitioner's argument that the decision below deprives the state courts of the opportunity to adjudicate the facts before they are decided by a federal court also ignores this Court's ruling in Sumner v. Mata, 449 U.S. 539, 101 S.Ct. 764 (1981).

11/ A claim is fairly presented, and state remedies adequately exhausted, only if "the petitioner has described the operative facts and legal theory on which his claim is based." Tamapua v. Shimoda, 796 F.2d 261, 262 (9th Cir. 1986). Here, the briefs of respondent and of the state in the earlier state proceedings were lodged with the district court, permitting the federal court to consider the arguments made to the state court in its assessment of whether state remedies had been adequately exhausted. (R5, lodged briefs.) Compare Gonce v. Redman, 780 F.2d 333, 336 (3rd Cir. 1985) (where the state court does not indicate in its opinion that the federal claims were presented, and the petitioner fails to make the briefs from his state court proceeding part of the record in his federal habeas proceeding, the federal court will assume that the state courts were not provided an opportunity to pass upon the claims).

12/ See Lindquist v. Gardner, 770 F.2d 876 (9th Cir. 1985) (petition for an original writ of habeas corpus to the Idaho Supreme Court does not constitute exhaustion of state remedies); Sweet v. Cupp, 640 F.2d 233 (9th Cir. 1981) (writ of original habeas corpus jurisdiction in the Oregon Supreme Court does not constitute exhaustion of remedies); see also Pitchess v. Davis, 421 U.S. 482 (1975) (application to the state court for an extraordinary writ of prohibition on a question that can be raised in the ordinary course of state proceedings does not constitute adequate exhaustion).

There, this Court held that facts, if addressed and decided on direct appeal by a state court, are binding on a federal habeas court.

C. Petitioner Should Direct His Arguments On The Interpretation Of California Law, In The First Instance, To The California Supreme Court.

As the Ninth Circuit indicated in refusing to stay its mandate in this case, if the California Supreme Court wishes federal courts to treat the denial of an appeal as a decision on procedural, rather than substantive grounds, the California Supreme Court can so indicate in a single sentence when it denies the appeal. Petitioner is reduced to arguing that adding this single sentence would unduly burden the California Supreme Court. (Pet., at 26-28.) It should be noted that in the past, the California Supreme Court has indicated its summary denial of a hearing was based on procedural grounds. See, e.g., McQuown v. McCartney, 795 F.2d 807, 808 & n.1, 809 (9th Cir. 1986); Harris v. Superior Court, 500 F.2d 1124 (9th Cir. 1974) (en banc), cert. denied, 420 U.S. 973, 103 S.Ct. 1394 (1975).

Petitioner ignores that if the California Supreme Court wishes to change its rules and require that ineffective assistance of counsel claims be dealt with by state habeas review, the California Supreme Court is free to do so. As discussed above, that is not the current rule under California state law. If the California Attorney General wishes the rule to be changed, he should direct his request to the California Supreme Court, not this one.

CONCLUSION

Petitioner misunderstands the doctrine of exhaustion of state remedies, which requires only that the substance of the federal claim be fairly presented to the state courts. The narrow and largely fact-bound decision below correctly found that Turner's claims were adequately presented under California law.

Accordingly, Respondent respectfully requests the Court to deny the Petition and permit him his day in federal court.

Respectfully submitted,

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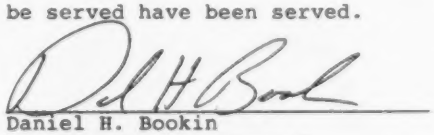
CERTIFICATE OF SERVICE

I, Daniel H. Bookin, a member of the Bar of this Court, hereby certify that on this 14th day of April, 1988, one copy of the Motion for Leave to Proceed In Forma Pauperis and one copy of the Brief in Opposition to the Petition for Writ of Certiorari in the above-entitled case were mailed, first class postage prepaid, to John K. Van De Kamp, Attorney General of the State of California, 110 West A Street, Suite 700, San Diego, California 92101, Attention: Raquel M. Gonzalez, Deputy Attorney General, counsel for petitioner herein. I further certify that all parties required to be served have been served.



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